DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0075PUF
Fuel Tax
For Year 2000

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ISSUES

I. Fuel Tax – Assessment

Authority: Illinois Title 86 Section 500.285; IC § 6-6-2.5-62; IC § 6-8.1-5-1

Taxpayer protests that state's assessment of penalty for use of red dye fuel was prohibited due to taxpayer's initial out-of-state purchase and use of red dye fuel.

FACTS

In November of 1999 taxpayer operated a truck in Indiana and a fuel analysis by the Department, consisting of a sample drawn from the vehicle's tank, found a Red Dye Concentration by VIS Spectroscopy. The Department issued an assessment for the violation. Taxpayer protested, arguing that the Indiana exemption for dyed fuel from an exempt jurisdiction applies, inasmuch as the truck in question filled its tank in Illinois, which taxpayer alleges did not regulate the use of dyed fuel in commercial vehicles at the time of the infraction.

DISCUSSION

I. Fuel Tax – Assessment

Taxpayer presents three arguments in support of its position. 1) Taxpayer argues that 26 U.S.C.A. 4081 (with supporting court citations) imposes the federal excise tax on manufacturers and retailers of gasoline and diesel fuel and not on the sale at the pump. Taxpayer further alleges that Federal law does not impose any liability on the consumer or any duty on the consumer to make sure the supplier has paid excise tax prior to the consumer pulling away from the pump and that the taxpayer was not violating federal law. 2) A finding of a violation would render the exception of IC § 6-6-2.5-62(c) meaningless, inasmuch as taxpayer was not violating Illinois law and if federal law prohibited the introduction of dyed fuel, no jurisdiction would qualify for the

exception. 3) The local prosecutor dismissed the criminal charge against taxpayer for the same violation.

IC § 6-6-2.5-62 states in relevant part:

> (c) No person shall operate or maintain a motor vehicle on any public highway in Indiana with special fuel contained in the fuel supply tank for the motor vehicle that contains dye or a marker, or both, as provided under section 31 of this chapter. This provision does not apply to persons operating motor vehicles that have *received fuel into their fuel tanks outside of Indiana in a jurisdiction that permits introduction of dyed or marked, or both, special fuel of that color and type into the motor fuel tank of highway vehicles or to a person that qualifies for the federal fuel tax exemption under Section 4082 of the Internal Revenue Code and that is registered with the department as a dyed fuel user.* A person who knowingly:
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> (1) violates; or
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> (2) aids and abets another person in violating;
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> this subsection commits a Class A infraction. However, the violation is a Class A misdemeanor if the person has committed one (1) prior unrelated violation of this subsection, and a Class D felony if the person has committed more than one (1) prior unrelated violation of this subsection. *(Emphasis added)*

As Indiana law specifically provides at IC § 6-8.1-5-1, notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. IC § 6-8.1-5-1 states in relevant part:

> The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

Taxpayer presents two forms of evidence: fuel receipts for an Illinois fuel purchase and an Illinois Informational Bulletin from September of 1999 announcing that as of January 1st, 2000 "Illinois is implementing a dyed diesel fuel program." Taxpayer argues that this announcement of a prospective implementation of a law for a date after taxpayer's citation constitutes proof that dyed fuel was allowed in Illinois at the time of the citation.

Taxpayer does not address the circumstances existing in Illinois at the time of the violation. 26 U.S.C.A. § 4082 establishes a Federal requirement that nontaxable fuel be dyed. At the time of this violation, Illinois did permit the use of nontaxable fuel on its highways. By way of illustration, Illinois Title 86 Section 500.285(in force as of 1995) states:

> a) A distributor of motor fuel or a supplier of special fuel may make tax-free sales thereof to a privately-owned public utility which owns an operates 2 axle vehicles designed and used for transporting more than 7 passengers, which vehicles are used as common carriers in general transportation of passengers,

are not devoted to any specialized purpose and are operated entirely within the territorial limits of a single municipality or of any group of contiguous municipalities, or in a close radius thereof, and the operations of which are subject to the regulations of the Illinois Commerce Commission, provided that the distributor or supplier obtains an official Certificate of Exemption in lieu of the tax.

b) Such Certificate of Exemption shall accompany the distributor's or supplier's monthly Motor Fuel Tax return to the Department to support his claim to exemption from the tax. *[Note: the Taxpayer has not claimed that this exemption applies and this cite is strictly for illustration of the Department's position.]*

Taxpayer's argument can be summarized as follows: since it is sometimes permissible in an outside jurisdiction for a taxpayer to use dyed fuel on its highways, Indiana must permit any taxpayer using dyed fuel purchased outside of Indiana to do so. Taxpayer argues that absent evidence of wrongdoing in Illinois, Indiana is prohibited from assessing tax against taxpayer and has presented the Department with the task of proving a violation in a jurisdiction outside of Indiana prior to proving an Indiana violation.

The Department notes that at the time of the violation the Federal government, the state of Illinois, and the state of Indiana regulated the use of dyed fuel. At the time of the assessment the Indiana statute permitted the use of dyed fuel on Indiana highways if the taxpayer held an exemption "under Section 4082 of the Internal Revenue Code and that [exemption] is registered with the department as a dyed fuel user," (IC § 6-6-2.5-62(c)) the Department also recognized an exemption for surrounding states for taxpayers "operating motor vehicles that have received fuel into their fuel tanks outside of Indiana in a jurisdiction that permits introduction of dyed or marked, or both, special fuel of that color and type into the motor fuel tank of highway vehicles." (IC § 6-6-2.5-62(c)) The regulation cited from Illinois states that a taxpayer, under the circumstances outlined in that regulation, may use dyed fuel if the taxpayer "obtains an official Certificate of Exemption in lieu of the tax." (Illinois Title 86 Section 500.285) Taxpayer's argument that there must have been a circumstance where the statutory exemption for the use of dyed fuel from outside jurisdictions was permitted on Indiana's highways is answered by the Indiana statute's provisions for both Federal dyed fuel use and by the indication that Illinois did have a means of regulating the use of dyed fuel on its highways with corresponding documentation required.

Absent proof by the taxpayer that the taxpayer's use of dyed fuel on Illinois highways was permitted by Illinois law, either by providing the above cited Certificate of Exemption or citing to an Illinois statute or regulation permitting this taxpayer to operate in said fashion, or demonstrating that taxpayer meets the Internal Revenue Code 4082 requirements, taxpayer has failed to meet the requirements of IC § 6-8.1-5-1. IC § 6-8.1-5-1 establishes the assessment as "prima facie evidence that the department's claim for the unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." The Department will not indulge in searching for proof of violations of Illinois or Federal laws to disprove taxpayer's blanket assertion that taxpayer's actions were

legal in these jurisdictions. Taxpayer was using dyed fuel on an Indiana highway, in violation of Indiana statutes, and taxpayer- not the Department- must establish the existence of a valid Illinois or Federal exemption to this statute.

Taxpayer's argument that the local prosecutor's decision to drop the charges related to this violation establish grounds for sustaining taxpayer's protest is not sustainable. The decision by a local prosecutor to proceed or defer on any case has no bearing on the validity of an Indiana Dept. of Revenue assessment.

FINDINGS

Taxpayer protest denied.

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